

REMARKS

Interview Summary

We thank the Examiner for the courtesy of the telephonic interview held on September 5, 2007. In the interview, we discussed the claims pending in the current application and the proper procedure to have the Office issue a new action addressing the amended claims in this case.

The Office Action Addresses the Wrong Claims

On July 31, 2004, Applicants filed an application under the Patent Cooperation Treaty (PCT) that was assigned application no. PCT/US04/25866. That application, as it was initially filed, included three claims. That application was later amended to replace the initially-filed claims with a set of sixty-six claims. Those amended claims were the subject of examination by the International Preliminary Examining Authority (IPEA), which issued an international preliminary examination report (IPER) in that case opining as to the patentability of all sixty-six claims.

On December 1, 2005, Applicants filed a 35 U.S.C. § 371 application in the United States Designated/Elected Office claiming the benefit of that PCT application. With this filing, Applicants submitted a document titled “Amendments to the Claims” listing claims 1-66. Applicants also submitted a copy of the International Preliminary Report on Patentability, which also addressed claims 1-66. On the Transmittal Letter to the United States Designated/Elected Office Concerning A Submission Under 35 U.S.C. 371, Applicants indicated that payment of filing fees for an extra 46 claims was being made.

The Office Action mailed on July 2, 2007, only opines on the patentability of the three claims initially filed with the PCT application, and not the claims subsequently amended to the PCT application. The MPEP states that “amendments to the international application that were properly made under PCT Article 34 during the international preliminary examination phase (Chapter II) will be annexed by the International Preliminary Examining Authority to the international preliminary examination report (IPER) and communicated to the elected Offices. ... If these annexes are in English, they will normally be entered into the U.S. national stage application by the Office absent a clear instruction by the applicant that the annexes are not to be entered.” MPEP 1893.01(a)(3). Here, the amendments were properly made by the Applicants, the amended claims were examined by the IPEA and were the subject of the IPER, the claims as

amended and the IPER were provided to the Office at the time of filing, and all of these matters were written in English. The Applicants did not give any instruction for the annexes not to be entered in this national stage application. To the contrary, the application as filed highlighted the presence of the amended claims and sought their entry.

Accordingly, the Applicants respectfully submit that the present office action examining initially-filed claims 1-3 was issued in error, and request its withdrawal and the issuance of a new office action examining amended claims 1-66. Although the Applicants do not believe it necessary, Applicants hereby explicitly request that the Office cancel pending claims 1-3 and replace them with amended claims 1-66.

CONCLUSION

For the foregoing reasons, Applicants respectfully request the Examiner to enter the PCT Article 34 Amendments that should have been entered upon the filing of this application, resulting in claims 1-66 pending in this application. Applicants also request the Examiner to withdraw the Office Action issued on July 2, 2007 and to issue a new Office Action addressing the patentability of claims 1-66.

If the Examiner believes that a telephone conversation with the Applicants' attorney would be helpful in expediting the allowance of this application, the Examiner is invited to call the undersigned at the number identified below.

Respectfully submitted,

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